

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.24 - ADVERTISEMENT OF DISABILITY (ACCIDENT AND SICKNESS) INSURANCE

DOCKET NO. 18-0124-0601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 41, Chapters 2 and 13, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency on or before August 16, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule regulates the advertisement of disability insurance. The proposed changes update the existing rule to cover internet advertising, clarify that long term care insurance is covered by the rule, specifically prohibit advertisements that do not clearly state the type of insurance being offered or that are designed to create undue fear in the minds of those to whom they are directed, eliminate an unnecessary paper filing requirement for insurers, and bring the rule into conformance with Department of Administration style requirements.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the primary changes simply clarify that long term care insurance is covered by the rule (it falls within the statutory definition of disability insurance) and eliminate an unnecessary paper filing.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Martha Hopper at (208) 334-4315.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2006.

DATED this 28th day of June, 2006.

Shad Priest, Acting Director
Idaho Department of Insurance
700 West State St., 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0124-0601

000. LEGAL AUTHORITY.

This rule is promulgated and adopted pursuant to the authority vested in the Director under Title 41, Chapters 2 and 13, Idaho Code. (7-1-93)()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 18.01.24, "Advertisement of Disability (Accident and Sickness) Insurance." ()

02. Scope. The purpose of these rules is to assure truthful and adequate disclosure of all material and relevant information in the advertising of accident and sickness insurance, including Medicare supplement accident and sickness insurance and long term care insurance. This purpose is intended to be accomplished by the establishment of, and adherence to, certain minimum standards and guidelines of conduct in the advertising of disability (accident and sickness) insurance in a manner which prevents unfair competition among insurers and is conducive to the accurate presentation and description to the insurance buying public of a policy of such insurance offered through various advertising media. (7-1-93)()

~~002.—003. (RESERVED).~~

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying in accordance with the public records act. ()

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

004. INCORPORATION BY REFERENCE. THERE ARE NO DOCUMENTS TO BE INCORPORATED BY REFERENCE.

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ()

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ()

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. ()

04. Web Site Address. The department's web address is <http://www.doi.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

~~006.—010. (RESERVED).~~

0047. APPLICABILITY.

01. Disability and Medicare Supplement Insurance. These rules shall apply to any disability (accident and sickness) insurance "advertisement," including Medicare supplement and long term care insurance

“advertisement,” as that term is hereinafter defined, intended for presentation, distribution or dissemination in this State when such presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer, ~~agent, broker or solicitor~~ producer as those terms are defined in the Insurance Code of this State and these rules. (7-1-93)(____)

02. Control over Advertisement. Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are so advertised. (7-1-93)

008. -- 009. (RESERVED).

00510. DEFINITIONS.

01. Advertisement. An advertisement for the purpose of these rules shall include: (7-1-93)

a. Printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, web sites and other internet displays or communications, other forms of electronic communications, billboards and similar displays; and (7-1-93)(____)

b. Descriptive literature and sales aids of all kinds issued by an insurer, ~~agent or broker~~ producer for presentation to members of the insurance buying public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and (7-1-93)(____)

c. Prepared sales talks, presentations and material for use by ~~agents, brokers and solicitors~~ producers whether prepared by the insurer or the producer. (7-1-93)(____)

02. Policy. “Policy” for the purpose of these rules shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides accident or sickness benefits, or medical, surgical or hospital expense benefits, whether on an indemnity, reimbursement, service or prepaid basis, except when issued in connection with another kind of insurance other than life, and except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts. The term includes contracts for Medicare supplement insurance and long term care insurance. (7-1-93)(____)

03. Insurer. “Insurer” for the purpose of these rules shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health maintenance organization, and any other legal entity which is defined as an “insurer” in the Insurance Code of this State and is engaged in the advertisement of a policy as “policy” is herein defined. (7-1-93)

04. Exception. “Exception” for the purpose of these rules shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy. (7-1-93)

05. Reduction. “Reduction” for the purpose of these rules shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used. (7-1-93)

06. Limitation. “Limitation” for the purpose of these rules shall mean any provision which restricts coverage under the policy other than an exception or a reduction. (7-1-93)

006. -- 010. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

013. ADVERTISEMENTS OF BENEFITS PAYABLE, LOSSES COVERED OR PREMIUMS PAYABLE.

01. Prohibitions. Deceptive Words, Phrases Or Illustrations Prohibited: (7-1-93)

a. No advertisement shall omit information or use words, phrases, statements, references or illustrations if the omission of such information or use of such words, phrases, statements, references or illustrations has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements. (7-1-93)

b. No advertisement shall contain or use words or phrases such as, “all”; “full”; “complete”; “comprehensive”; “unlimited”; “up to”; “as high as”; “this policy will help pay your hospital and surgical bills”; “this policy will help fill some of the gaps that Medicare and your present insurance leave out”; “this policy will help to replace your income” (when used to express loss of time benefits); or similar words and phrases, in a manner which exaggerates any benefits beyond the terms of the policy. (7-1-93)

c. An advertisement shall not contain descriptions of a policy limitation, exception, or reduction, worded in a positive manner to imply that it is a benefit, such as, describing a waiting period as a “benefit builder”, or stating “even pre-existing conditions are covered after two years”. Words and phrases used in an advertisement to describe such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions and reductions of the policy offered. (7-1-93)

d. No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as “tax free”; “extra cash”; “extra income”; “extra pay”; or substantially similar words or phrases in such a manner as to have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable them to make a profit from being hospitalized. (7-1-93)

e. No advertisement of a hospital or other similar facility benefit shall advertise that the amount of the benefit is payable on a monthly or weekly basis when, in fact, the amount of the benefit payable is based upon a daily pro - rata basis relating to the number of days of confinement. When the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement. (7-1-93)

f. No advertisement of a policy covering only one (1) disease or a list of specified diseases shall imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease so as to imply broader coverage than is the fact. (7-1-93)

g. An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be worded in language identical to, or substantially similar to the following: “THIS IS A LIMITED POLICY”; “THIS IS A CANCER ONLY POLICY”; “THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY.” (7-1-93)

h. An advertisement of a direct response insurance product shall not imply that because “no insurance agent will call and no commissions will be paid to agents” that it is a “low cost plan”, or use other similar words or phrases because the cost of advertising and servicing such policies is a substantial cost in the marketing of a direct response insurance product. (7-1-93)

i. No advertisement shall contain or use words or phrases such as, “Medicare supplement”; “Medigap”; “this policy will help fill some of the gaps that Medicare leaves out”; or similar words and phrases, unless the policy is issued in compliance with IDAPA 18.01.54, “Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.” (7-1-93)

j. An advertisement must state clearly the type of insurance coverage being offered. ()

k. An advertisement, including invitations to inquire or invitations to contract, shall not employ

devices that are designed to create undue fear or anxiety in the minds of those to whom they are directed. An example is the use of phrases such as "cancer kills somebody every two minutes" or use of statistics such as the number of injuries due to accidents without reference to the total population from which the statistics are drawn. ()

02. Exceptions, Reductions and Limitations. (7-1-93)

a. When an advertisement refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive. (7-1-93)

b. When a policy contains a waiting, elimination, probationary or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an advertisement which is subject to the requirements of the preceding paragraph shall disclose the existence of such periods. (7-1-93)

c. An advertisement shall not use the words "only"; "just"; "merely"; "minimum"; or similar words or phrases to describe the applicability of any exceptions and reductions, such as: "This policy is subject to the following minimum exceptions and reductions". (7-1-93)

03. Pre-Existing Conditions. (7-1-93)

a. An advertisement which is subject to the requirements of Subsection 013.02 shall, in negative terms, disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy. The ~~use of the~~ term "pre-existing condition" without an appropriate definition or description shall not be used. (7-1-93)()

b. When a policy does not cover losses resulting from pre-existing conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. This rule prohibits the use of the phrase "no medical examination required" and phrases of a similar import, but does not prohibit explaining "automatic issue". If an insurer requires a medical examination for a specified policy, the advertisement shall disclose that a medical examination is required. (7-1-93)

c. When an advertisement contains an application form to be completed by the applicant and returned by mail for a direct response insurance product, such application form shall contain a question or statement which reflects the pre-existing condition provisions of the policy immediately preceding the blank space for the applicant's signature. For example, such an application form shall contain a question or statement substantially as follows: "Do you understand that this policy will not pay benefits during the first _____ year(s) after the issue date for a disease or physical condition which you now have or have had in the past?" ____ YES. Or substantially the following statement: "I understand that the policy applied for will not pay benefits for any loss incurred during the first _____ year(s) after the issue date on account of disease or physical condition which I now have or have had in the past." (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

024. ENFORCEMENT PROCEDURES.

~~01. Advertising File.~~ Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies hereafter disseminated in this or any other state whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to regular and periodical inspection by this Department. All such advertisements shall be maintained in said file for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is

the longer period of time.

(7-1-93)()

~~02. **Certificate of Compliance.** Each insurer required to file an Annual Statement which is now or which hereafter becomes subject to the provisions of these rules must file with this Department with its Annual Statement a Certificate of Compliance executed by an authorized officer of the insurer wherein it is stated that to the best of his knowledge, information and belief the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of these rules and the insurance laws of this State as implemented and interpreted by these rules.~~

(7-1-93)